



Department of Labor Final Rule

Participant Information

What is this about?

You may know about our country's rules on work contained in the Fair Labor Standards Act (FLSA).

- People must be paid at least a \$7.25 per hour. This is called the minimum wage.
- People who work more than 40 hours per week have to be paid time and a half for each hour worked over 40.

What is changing?

The United States Department of Labor (DOL) has changed the FLSA rules. Until now, individuals, families and agencies that hired someone to provide services for a person in his or her home did not have to follow these rules.

Now they do.

When do the new rules start?

The new rules started on October 13, 2015.

For more information, go to <http://www.dol.gov/whd/homecare/>
and click on **"For Individuals and Families."**

What does this mean for me?

If you participate in a home and community based services (HCBS) program and receive personal care services (PCS) or sleep-cycle support, these rules will also apply to you.

- If your worker is hired and provided by an agency, then the agency that hires, fires and provides your worker must follow these rules.
- If you self-direct your services (you are the one who hires, fires and trains your worker) and a financial management services (FMS) provider assists and provides information to you to make sure your workers are paid correctly and have taxes taken out of their wages, you will need to follow these rules.

What stays the same?

1. For participants self-directing services, you are still the employer and responsible for your workers.
2. You are still responsible for complying with the rules of the HCBS Program.
3. You will still work with your FMS provider for your self-directed services.
4. Your workers (agency-directed and self-directed) must still use AuthentiCare®.

What will change?

If you are receiving sleep cycle support or personal care services

1. Your workers, which may include guardians, family and friends, are subject to FLSA.
 - a. All of the time that the worker works for you (even overnight time) must be counted towards the workweek.
 - b. A worker must be paid overtime if working over 40 hours in a workweek for you.
2. For participants with both agency-directed and self-directed services, you may need more workers to meet your needs.
3. Your overnight support through sleep cycle may change to meet your needs.

Sleep Cycle Support will change to comply with FLSA but still meet people's needs. KDADS is proposing a new service to help individuals who need care, including overnight support, in addition to personal care services. **Enhanced Care Services (ECS)*** will be available for individuals who:

1. Have at least 12 hours of PCS on their Integrated Service Plan (ISP)
2. Need a minimum of six hours of care in addition to the 12 hours of PCS (for example, for overnight support)
3. Cannot use a personal emergency response service (PERS) or other services and supports to meet the need during that time period

ECS Limitations

1. Must be provided in your home for at least 6 hours
2. ECS cannot duplicate other services or informal supports
3. The combination of ECS, 12 hours of PCS and other HCBS services and informal supports cannot exceed 24 hours in a 24-hour period.

**You can comment on proposed waiver changes (such as ECS) from November 1st to 30st.*

What are the next steps?

1. The Managed Care Organizations (MCO) may contact you to:
 - a. Review your ISP and your need for overnight support
 - b. Assess you to see what kind of services you need and help you look at options for informal and paid supports to meet your needs
 - c. Make changes to your ISP, if necessary.
2. You can get information and assistance from your financial management services (FMS) provider about:
 - a. Options to make sure your worker is paid correctly for all hours worked
 - b. Resources and tools to assist you as the employer to help you follow the rules
 - c. What could happen if you do not follow this rule for your employees

Resources

The Kansas Department for Aging and Disability Services (KDADS) also wants to help. Please remember that KDADS cannot give you legal advice, tax advice or special advice to help you answer your employment questions.

1. You can call our offices at 785-296-4980 or email us at HCBS-KS@kdads.ks.gov.
2. You can write a letter to KDADS, 503 S. Kansas Ave, Topeka, KS 66603, Attn: HCBS

For More Information

1. Speak to your FMS provider to help you get copies of documents you want to review.
1. Visit the KDADS website at www.KDADS.ks.gov.
2. Visit the DOL website at www.dol.gov/whd/homecare.